mobile was moving at a rate of two miles an hour and the street car was approaching at a speed of thirty miles an hour. Defendant moved for a peremptory instruction in its favor, contending that plaintiff's failure to stop and look before crossing constituted contributory negligence, as a matter of law, which barred his right to recover. The court refused so to instruct, and left the question of contributory negligence to the jury. *Held,* that failure to stop and look does not constitute contributory negligence as a matter of law, but is a question of fact for the jury. *Washington Ry. & Electric Co.* v. *Stuart* (D. C., 1920) 267 Fed. 632.

The court, in this case, clearly draws the distinction between cases involving steam railway crossings and those involving street railway crossings. The general rule in the case of steam railway crossings seems to be that failure to stop, look and listen before crossing constitutes contributory negligence as a matter of law. *Koch* v. *Southern California R. R.,* 148 Cal. 677, and cases there cited; *Haven* v. *Erie R. R.,* 41 N. Y. 296; *Northern Pacific Ry. Co.* v. *Freeman,* 174 U. S. 379. In the principal case the court points out that no one has a right to assume that a steam train or interurban car, operated on the company's right of way, will be under control with a view of stopping promptly if the safety of a pedestrian or other person crossing the track requires it. It also points out that street railway tracks are necessarily to be crossed with great frequency, by reason of their occupancy of public streets, and that the facility with which such cars are stopped and the frequency of their stopping make the danger measurably less than that incurred in crossing an ordinary railroad crossing. The weight of authority seems to support the distinctions here drawn. *Detroit United Ry.* v. *Nichols,* 165 Fed. 289; *City & Suburban Ry. Co.* v. *Cooper,* 32 App. D. C. 550; *McQuisten* v. *Detroit Street Ry.,* 148 Mich. 67.

TRIALS—MOTION FOR DIRECTED VERDICT—EFFECT OF MOTION BY BOTH SIDES.—P sued D as assignee of X. D set up as a special defense that the assignment was void because it was champertous. At the close of the testimany D moved for a directed verdict on the ground the evidence conclusively showed champerty, and P. also moved for a directed verdict, with the proviso that if the court ruled against them he be allowed to go to the jury upon the facts. The court refused to accept the conditional motion and ordered P to elect between going to the jury and moving for the directed verdict. Under protest P moved for a directed verdict, and then the court found as a fact that the assignment was champertous and rendered judgment for D. *Held,* error, for where counsel makes it plain that he wishes to go to the jury on a question of fact, a motion for a directed verdict by both sides does not present the question of fact irrevocably to the court. *Sampliner* v. *Motion Picture Patents Co.* (U. S., 1920), 41 Sup. Ct. Rep. 79.

While it is true, as the trial court held, that a request by both sides for directed verdict, by the great weight of authority, waives the right to trial of the facts by the jury and submits them to the court, yet it does not follow that the implication of waiver may not be rebutted by an express or implied

denial of an intention to waive. *Hatch* v. *Calhoun County,* 170 Mich. 322; *St. Louis Railway* v. *Mulkey,* 100 Ark. 71, Ann. Cas. 1913C 1338, and note. The trial court seems to have fallen into the same error which has deterred minority courts from following the general rule on the ground that its adoption would provide a trap for the unwary and a penalty of a denial of trial by jury upon a motion for directed verdict. *Wolf* v. *Chicago Sign Co.,* 233 Ill. 501, 13 Ann. Cas. 369, and note; *Virginia-Tennessee Hardware Co.* v. *Hodges,* 126 Tenn. 370. One court at least has reached the minority rule as a matter of logic and analysis of the effect of a motion for directed verdict, saying that "one who claims that the evidence is all his way cannot reasonably be held to waive the right to claim that, at least, some of it is his way." *Fitzsimmons* v. *Richardson,* 86 Vt. 229. That the minority courts have no reason to refuse to follow the majority rule because of its danger is not only shown conclusively by the decision of the court in the principal case but also by an unbroken line of decisions in courts following the majority rule. *Empire State Cattle Co.* v. *Atchison Ry.,* 210 U. S. 1, also note in 6 Ann. Cas. 547; *Pemiston* v. *Coleman,* 126 N. Y. S. 736. The power of counsel to request a jury trial even after both parties have moved for directed verdicts apparently should conclusively answer the objections to the general rule given voice to in the *Wolf* and *Hodges* cases, *supra.*

VENDOR AND PURCHASER—AGREEMENT TO CONVEY FREE FROM ENCUMBRANCES AS APPLIED TO VISIBLE EASEMENTS.—Suit was brought by an executor to enforce specifically an agreement for the sale of land free from all encumbrances. W defended on the ground that the plaintiff could not give him a marketable title, since the land was subject to an easement of way for electric wires carried upon huge steel towers. *Held,* no defense, for vendee is presumed to have contracted to accept the land subject to encumbrances of an open and notorious nature. *McCarty* v. *Wilson* (Cal., 1920), 193 Pac. 578.

The decision of the principal case rested largely upon another recent California decision, *Ferguson* v. *Edgar* (1919), 178 Cal. 17, where it was held that a vendee had no right to rescind a contract to purchase land free from encumbrances, because of the existence of an irrigation ditch and canal upon the land. This principal has been generally applied in cases involving a public highway, *Patterson* v. *Arthurs,* 9 Watts (Pa.) 152, and especially in suits upon covenants against encumbrances by the grantee of a warranty deed. MAUPIN ON MARKETABLE TITLE, 304; *Kellog* v. *Ingersoll,* 2 Mass. 97, *contra;* and in one case at least it was held not an encumbrance within the meaning of the covenant, even though the purchaser did not know of the existence of the highway. *Sandum* v. *Johnson,* 122 Minn. 368, but this case is extreme. As to ordinary private easements, the authorities are irreconcilably in conflict. The theory of one group of these cases seems to be that the instrument being the grantor's, and having failed to put in an exception, he must abide by his covenant as made, and knowledge by the grantee cannot have the effect of qualifying a general covenant, since an article may be warranted